IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PIMA COUNTY, a political subdivision; PIMA COUNTY BOARD OF SUPERVISORS,	)	2 CA-CV 2007-0080
	)	DEPARTMENT B
Plaintiffs/Appellees,	)	MEMORANDUM DECISION
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
VERNON WALKER,	)	
Defendant/Appellant.	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20061053

Honorable Michael O. Miller, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Scott D. McDonald
Tucson
Attorneys for Plaintiffs/Appellees

Scott K. Risley, P.C.
By Scott K. Risley
Prescott
Attorneys for Defendant/Appellant

E S P I N O S A, Judge.

¶1 Appellant Vernon Walker appeals the trial court's judgment granting Pima County injunctive relief relating to violations of the Pima County Building Code.[1] For the following reasons, we affirm.

¶2 In February 2006, Pima County filed a complaint pursuant to A.R.S. § 11-808(H) requesting injunctive relief for Walker's existing Building Code violations.[2] After the parties stipulated to a form of preliminary injunction, a hearing was set in August 2006 to resolve the underlying issues. That hearing was continued to September 13 based on issues Walker had raised during the hearing. The September date was continued to November 6 and that date was continued after neither Walker nor his counsel appeared. The county attorney informed the court that Walker's counsel had a medical issue and Walker's primary witness was unavailable. At the rescheduled hearing on November 15, the court continued the evidentiary issues to November 16 because Walker's witness was again unavailable, but conducted a hearing on the legal issues. After the November 16 hearing was completed, the court granted the relief sought by the County, and Walker appealed.

¶3 As an initial matter, we do not address any issues Walker raises on appeal challenging the underlying administrative decision finding Walker had violated the Building Code. After Walker failed to seek timely review of that decision, it became final and could

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[1]There is no "Pima County Building Code" per se, but the parties consistently refer to the Pima County Code in this manner and we utilize that nomenclature for clarity and convenience.

[2]Section 11-808(H) permits either the Board of Supervisors or the county attorney to seek injunctive relief for Code violations, "in addition to the other remedies provided by law."

not be collaterally attacked in a new proceeding.[3] *See Hurst v. Bisbee Unified Sch. Dist.*, 125 Ariz. 72, 75, 607 P.2d 391, 394 (App. 1979) (collateral attack on administrative decision precluded by failure to appeal).

¶4 The trial court, however, in "the interest of judicial efficiency," addressed the issues on their merits, concluding "[i]t is not clear that the case law or A.R.S. § 12-902(B) precludes a party from asserting defenses in a subsequent action brought by the administrative agency." But the statute does not support this conclusion. Section 12-902(B) clearly states, "the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of the decision" if there has not been compliance with the requirements of the statutes. Otherwise, each time an agency sought to enforce previously adjudicated violations, the underlying determinations would be subject to *de facto* judicial review in the guise of "defenses" to that proceeding. The administrative hearing process, which, in this case, was pursuant to the Pima County Code, provided the forum for the parties to present any alleged defenses to the trier of fact. There is no reference in the statute to "judicial efficiency" as an exception to judicial review being barred once the deadline for

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[3]Walker previously attempted to seek judicial review of the Pima County Board of Supervisors' decision upholding a hearing officer's decision finding Walker in violation of the Building Code. The superior court dismissed Walker's complaint in June 2006 because his failure to timely request review had deprived the court of jurisdiction under the Judicial Review of Administrative Decisions Act (JDARA), A.R.S. §§ 12-901 through 12-914. Walker did not appeal the dismissal, but in January 2007, filed a motion for reconsideration and a motion for relief from judgment pursuant to Rule 60(c), Ariz. R. Civ. P. The court denied these motions, and Walker appealed. This court has recently issued a decision in that case, affirming the superior court. *See Walker v. Pima County*, No. 2 CA-CV 2007-0069 (memorandum decision filed Feb. 28, 2008).

seeking such review has passed. We thus conclude that, based on § 12-902(B), the superior court lacked jurisdiction to review any issues relating to the underlying administrative decision. *See Smith v. Ariz. Citizens Clean Elections*, 212 Ariz. 407, ¶ 25, 132 P.3d 1187, 1193 (2006).

¶5 Walker next devotes lengthy argument to the trial court's denial of his motion pursuant to Rule 60(c). However, the trial court's April 2, 2007 judgment in this case, the judgment from which this appeal has been taken, does not mention, much less rule on, any Rule 60(c) motion. Nor does the record in this case even contain a Rule 60(c) motion. Thus, we lack jurisdiction to review any such claim in this appeal.[4] *See State v. Griswold*, 8 Ariz. App. 361, 363, 446 P.2d 467, 469 (1968) (appellate court's determination confined to record before it).

¶6 We next address Walker's claim that the trial court erred in permitting Pima County Building Inspector Huntley to testify at the hearing on the ground he was not a qualified expert. The County responds that the inspector's testimony was permissible under Rule 701, Ariz. R. Evid., as opinion evidence from a non-expert witness. We note, however, Walker's challenge to Huntley's testimony is based on his assertion that Huntley's conclusions about the adequacy of a steel beam in Walker's house led to "the County

[4]As noted earlier, Walker did file a Rule 60(c) motion in his previous, related case, No. C20060856, which was appealed to this court and recently adjudicated. *See Walker*, No. 2 CA-CV 2007-0069.

charg[ing] Walker with a violation of its Building Code."[5] As the County points out, the allegations against Walker were that he had failed to obtain necessary permits before construction began and also had failed to comply with correction notices. There was no allegation that he had violated the Building Code because a steel beam installed on the property had been inadequate. In any event, the charges against Walker were the basis of the administrative decision that the trial court lacked jurisdiction to review, as discussed above.[6] Thus, Huntley's testimony was not only irrelevant to any issue addressed during the hearing, but was only related to issues that the trial court lacked jurisdiction to address.

¶7 Walker further argues the trial court's judgment granting injunctive relief is unenforceable because it is vague. The County contends Walker waived this argument by failing to object to the form of judgment lodged with the court below. Rule 58(d), Ariz. R. Civ. P., provides a procedure for parties to object to a judgment before it is signed and entered by the trial court. It does, indeed, appear Walker did not object to the form of judgment. This court generally will not address an issue that has not first been presented to the trial court for its resolution. *See Lemons v. Showcase Motors, Inc.*, 207 Ariz. 537, n.1, 88 P.3d 1149, 1153 n.1 (App. 2004); *Maricopa County v. State*, 187 Ariz. 275, 281, 928 P.2d 699, 705 (App. 1996). Moreover, even if this issue was preserved for appeal, we note the

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[5]Huntley testified he had twenty-nine years of experience as a building inspector and that the beam "looked" inadequate because it lacked "physical[] mechanical[] attach[ments]" to the post supporting the beam, and was visibly "sagging."

[6]The underlying administrative decision that Walker had violated the Building Code as alleged by Pima County became final in January 2007, ten months before the hearing in this case. *See Walker*, 2 CA-CV 2007-0069.

language of the judgment clearly and specifically directs Walker to comply with the Pima County Building Code and obtain permits and inspections for the property at issue, or in the alternative, remove any construction in violation of the Code. Walker has not demonstrated any error in the trial court's alleged failure to *sua sponte* provide him with "guidelines to which he can turn in order to determine whether he is in compliance with the Court's orders."

¶8 Finally, Walker contends the trial court erred because no copy of the Pima County Building Code was entered into evidence during the superior court hearing and the court "relied exclusively on Huntley's memorization." But there is no support in the record for the latter claim. Furthermore, the County points out that Walker failed to raise the issue below, has not explained how the trial court misapplied the Building Code, and the Code is a public record which, pursuant to A.R.S. § 11-864, was available for public inspection at the Board of Supervisor's Office. Walker, cites no authority to support his argument, as required by Rule 13(a)(6), Ariz. R. Civ. App. P.[7] *See Brown v. U.S. Fid. and Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998); *Mercantile Nat'l. Life Ins. Co. v. Villalba*, 18 Ariz. App. 179, 180, 501 P.2d 20, 21 (1972). We find specious his speculation that the trial court decided the case without reference to applicable code provisions merely because neither the County nor Walker saw any need to introduce "any copies of the Pima County Building Code." Therefore, we do not address this argument further.

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[7]Rule 13(a)(6), Ariz. R. Civ. App. P., requires that appellate arguments contain: "the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."

¶9 Pima County has requested sanctions against Walker pursuant to Rule 25, Ariz. R. Civ. App. P., claiming *inter alia*, that Walker has raised issues in his briefs "which are waived, copied from another brief, without merit, or simply irrelevant to this appeal." In light of our foregoing discussion, we agree. Rule 25 permits sanctions to be imposed when an appeal "is frivolous or taken solely for the purpose of delay" in order to discourage similar conduct in the future. "[I]f the issues raised are supportable by any reasonable legal theory, or if a colorable legal argument is presented about which reasonable attorneys could differ, the argument is not objectively frivolous." *Matter of Levine*, 174 Ariz. 146, 153, 847 P.2d 1093, 1100 (1993).

¶10 Walker has cited no authority, nor have we found any, to support the proposition that this court may grant appellate relief from a lower court ruling made in a different case that is not the case on appeal. And, Walker's unsupported contention that the trial court may only consider applicable administrative regulations that have been admitted in evidence is patently frivolous. Therefore, in our discretion we award the County its reasonable attorney fees related to this appeal, 2 CA-CV 2007-0080, upon compliance with Rule 21, Ariz. R. Civ. App. P.

¶11 The trial court's judgment is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge